

Remarks

By this Amendment, Applicant seeks to amend claims 1, 15, and 23. Claims 1, 7, 8, 14-18, and 20-24 are pending in the application. No new matter is believed to be added.

In view of the Examiner's earlier restriction requirement, Applicant retains the right to present claims 2-6, 9-13, and 19 in a divisional application.

Examiner Interview

Applicant thanks the Examiner for the personal interview of January 10, 2008. No exhibits or demonstrations were shown. Claim 1 and the Miller reference were discussed. Applicants discussed amending claim 1 to recite parameters considered in calculating a time to auction close window, perhaps incorporating elements from claim 15. Applicant argued that none of the references taught (1) a bidder-centric bidding automation service separate from an auction services site, and (2) waiting to bid until a calculated time, very close to the time of the auction close, to avoid driving up the bid value. No specific agreement was reached, however, the Examiner agreed that the invention as described was not taught by the cited references.

Rejections under 35 U.S.C. Section 112

The Examiner rejects, at page 2 of the office action, claims 1, 7, 8, 14-18, and 20-23 as being indefinite under 35 USC 112 paragraph 2 due to the phrases "close to a time of auction closing" and "as close as possible to a time of auction closing." Applicant has amended claims 1 and 23 to more clearly state what is meant by these phrases. Applicant respectfully submits that the amended claims are not indefinite and requests that the rejection be withdrawn.

Rejections under 35 U.S.C. Section 103

The Examiner rejects, at page 3 of the office action, claims 1, 7, 8, 14, 18, 22, and 23 as being unpatentable over Michael Miller, "The Complete Idiot's guide to online auctions" (QUE 1999), (hereinafter "Miller"), in view of US Patent Application Publication US 2006/0074792 to Wagoner et al. (hereinafter "Wagoner"), in further view of U.S. Patent No. 6839690 ("Foth") and U.S. Patent No. 7099841 ("Hall"). Applicant respectfully disagrees for at least the following reasons.

Miller appears to set forth a bidding proxy service embedded within an online auction hosting services site, e.g. eBay. Further, the bidding proxy service is essentially seller-centric, because bids are placed “*rapidly*,” and “*seemingly instantaneously*” (see, e.g. Miller pages 34 and 192) for a Buyer using an embedded bid automation system of a single auction hosting service, specifically “eBay’s proxy bidding system” (see page 192). This causes the bid value to rise quickly in the presence of at least two bidders. Further, Miller teaches switching away from the proxy bidding to human monitoring and manual bidding within a few minutes of an auction close, due to the time required to receive the notification that a bidder has been outbid, the time required to log back into eBay and to make a new bid. (See page 194: “Don’t Wait for the Email”).

Wagoner sets forth a continuous online auction system and method enabling auctioning of products including an auction center including a bid processing module configured to execute in the auction center. The bid processing center may accept and conduct proxy bidding for a buyer. See paragraph 40. The bid processing module is not separate from the auction center, and is also seller-centric. Buyers may specify a time delay for their proxy bids. See paragraph 40.

Foth sets forth an Internet-based system that allows buyers and sellers to register financial and historic information with a trusted third party in order to coordinate a sale. See Abstract. Foth does not disclose either a bidder-centric bidding automation services application site or an online auction hosting services site.

Hall sets forth a system and method for trading permanent seat licenses (PSL) over a computer network. Hall provides an intermediary that registers potential buyers and sellers, and a PSL exchange on which approved sellers may post PSLs for sale. Approved buyers may “bid” on a listed PSL, however, Hall does not include a bidder-centric bidding automation services application site separate from an online auction hosting services site.

An exemplary embodiment of Applicant’s invention, as set forth in claim 1, for example, provides for a method that minimizes the bid value to be paid by a bidder on a forward auction, at least in part, by placement of a bid as late as possible through the use of an automated bid proxy

with knowledge of bid parameters, where the bid proxy service is separate from an online auction hosting service. Thus, by severing (at least in its emphasis) the bid proxy from the online auction hosting service, an improved, bidder-centric, bid automation services system may be provided, according to an exemplary embodiment of Applicant's invention, seeking to make central a bidder's priorities. Claim 1, as amended, sets forth an exemplary embodiment of Applicant's invention including, *inter alia*:

A method of automating an interaction between a bidder and an electronic, dynamic pricing online auction hosting service comprising:

- a. receiving a registration of a bidder at an online, computer-implemented, Internet-based, bidder-centric bidding automation services application site, wherein ***said bidder-centric bidding automation services application site is separate from any online auction hosting services site***, by creating logon credentials that are used to at least one of authenticate and/or authorize the bidder's use of services of the bidder-centric bidding automation services application site; and receiving at least one auction hosting services site account associated with the bidder;
- b. receiving financial transaction instrument information of the bidder to fund said bidder-centric bidding automation services application site;
- c. receiving at least one auction and one of said at least one online auction hosting services sites associated with said at least one auction, and storing said at least one auction in a bid portfolio of the bidder for acquiring data using at least one scan agent and/or at least one bid proxy;
- d. providing monitoring, by the at least one scan agent, of temporal progression of the at least one auction, and notifying the bidder and/or the at least one bid proxy of any changes affecting the bidder's programmed bid parameters of the at least one auction, wherein ***said monitoring by the at least one scan agent is performed at least within a time of auction closing window(TACW), wherein TACW is a function of at least one of: a current bid, a relative differential bid, a minimum valid bid increment, auction hosting services site performance parameters, auction site telemetry information computed based on recent response***

times and network latencies as determined by the scan agent, and/or delay close counter measures;

e. enabling activating of the at least one bid proxy to programmatically bid on said at least one auction of said one of said at least one online auction hosting services site, by emulating the bidder's input, including navigation and command input, to said at least one online auction hosting services site, the at least one bid proxy placing at least one bid, driven by said programmed bid parameters, until said at least one auction is either won or lost by a time of auction close (TAC) of said at least one auction, wherein *said bidding by the at least one bid proxy begins at a start of said TACW and ends at TAC*, and wherein said at least one scan agent determines whether or not a competitive bid has outbid a most recent bid of the bidder; and

f. activating the at least one bid proxy to programmatically place at least one counter bid by the emulating of the input of the bidder for said at least one online auction hosting services site, if said competitive bid is determined to have been placed and detected before the time of auction closing of said at least one auction, wherein said at least one counter bid comprises computing and executing a valid higher bid for a forward auction or a lower bid for a reverse auction, that is within said programmed bid parameters, if said competitive bid has been made and accepted by the auction site that is higher for the forward auction or lower for the reverse auction than the most recent bid detected by the at least one scan agent.

Emphasis added.

Applicant respectfully notes that Miller, Wagoner, Foth and Hall, alone, or in combination, fail to teach at least three elements of amended claim 1.

I. First, the references fail to teach an online *bidder-centric* bid automation services application site, which is *separate from* an auction hosting services site. Applicant's claimed invention, according to an exemplary embodiment is "bidder-centric" and separate from the auction hosting service site. A bidder and an online auction hosting service have diametrically opposed business objectives which conventionally discouraged provision of a bidder focused

automation tool. A bidder's objective is generally to minimize the amount paid for an item in a forward auction (i.e., maximize in a reverse auction), while an online auction hosting service instead aims to maximize the amount paid for a seller in a forward auction (i.e., minimize for a buyer in a reverse auction), to collect commission fees from sales, and to encourage the seller to sell products at auction on the online auction hosting service's site. Demonstrative of this seller-centric focus for forward auctions (buyer-centric for reverse) of an online auction hosting service's embedded proprietary proxy bid service is, e.g., the embedded eBay® forward auction proxy service described in Miller, that seeks to expose and to test any bidder's highest bid value against other pending, proxied bids from other buyers in a proxy queue. The office action concedes that Miller does not teach an online *bidder-centric* bid automation services application site, which is *separate from* an auction hosting services site, and relies on Foth and Hall to allegedly teach this element. However, the combination also fails to teach this element.

A. First, Foth fails to teach either an online bidder-centric bid automation services application site or an auction hosting services site. At best, Foth teaches only a service through which buyers and sellers may have their credentials verified by a neutral third party before conducting business. No auctions or bid automation services are discussed. Second, Foth cannot be aligned with these elements of claim 1, because there is only one service discussed in Foth, not the separate bid automation service and auction hosting service as in claim 1.

B. Hall also fails to teach either an online bidder-centric bid automation services application site or an auction hosting services site. Instead, Hall teaches, at best, an auction hosting service site, i.e. the PSL exchange, where PSLs are listed for sale, and where "bids" may be submitted by a potential buyer. The other "service" of Hall is the intermediary, which is not a bid automation services application site, but rather a service, similar to Foth, that allows participants in the PSL exchange to register and be approved to participate. The intermediary is not separate from the PSL exchange, because potential sales must still be approved through the intermediary and possibly the initial issuer of the PSL. The intermediary also receives a commission fee.

C. It would not have been obvious to combine these references to obtain the claimed element, because the combination fails to teach the element.

II. Second, the references fail to teach providing monitoring, by the at least one scan agent, of temporal progression of the at least one auction, and notifying the bidder and/or the at least one bid proxy of any changes affecting the bidder's programmed bid parameters of the at least one

auction, wherein said *monitoring by the at least one scan agent is performed at least within a time of auction closing window(TACW)*, wherein *TACW is a function of at least one of: a current bid, a relative differential bid, a minimum valid bid increment, auction hosting services site performance parameters, auction site telemetry information computed based on recent response times and network latencies as determined by the scan agent, and/or delay close counter measures.* The office action concedes that Miller does not teach temporal monitoring and relies on Wagoner to allegedly teach this element in combination of Miller.

A. Wagoner teaches, at best, having the buyer schedule a bid within, e.g., 20 minutes before an auction closes, or ten minutes after a competing bid is placed. Wagoner, paragraph 40. There is no discussion in Wagoner of monitoring within a TACW that is a function of at least one of a current bid, a relative differential bid, a minimum valid bid increment, auction hosting services site performance parameters, auction site telemetry information computed based on recent response times and network latencies as determined by the scan agent, and/or delay close counter measures. The bid processing module in Wagoner appears to monitor the current high bid in order to place the next proxy bid, and may wait an arbitrary, user-specified period of time before placing a bid, or may wait until an arbitrary, user-specified time before placing a bid. In no case does Wagoner calculate a time window in which to monitor changes, where the time window is determined at least one of the claimed parameters. Therefore, Wagoner fails to teach, alone or in combination with Miller, providing monitoring, by the at least one scan agent, of temporal progression of the at least one auction, and notifying the bidder and/or the at least one bid proxy of any changes affecting the bidder's programmed bid parameters of the at least one auction, wherein said monitoring by the at least one scan agent is performed at least within a time of auction closing window(TACW), wherein TACW is a function of at least one of: a current bid, a relative differential bid, a minimum valid bid increment, auction hosting services site performance parameters, auction site telemetry information computed based on recent response times and network latencies as determined by the scan agent, and/or delay close counter measures.

III. Third, the references fail to teach programmatically bidding by at least one bid proxy wherein said bidding by the at least one bid proxy **begins at a start of said TACW and ends at TAC**. The office action concedes that Miller fails to teach this element and relies on Wagoner to teach it in combination with Miller.

A. First, as discussed above, Wagoner teaches placing proxy bids when a higher bid is placed by another bidder. Wagoner, paragraph 40. This is what is also taught by Miller, and

inherently causes bids to escalate quickly in value, especially in the presence of two or more automated bidding agents. In contrast, in claim 1, bidding is begun at the start of the TACW, which may be a function of, for example, a difference between current bid and expected winning bid, and/or the time it takes to make a bid as determined by auction site performance and/or network latency. Bidding is delayed until at least the start of the TACW in order to keep the winning bid value as low as possible and to avoid providing transparency or visibility of the bid. This feature supports the bidder-centric nature of the bid automation service.

B. Further, Miller explicitly teaches away from bid automation near a time of auction close, as discussed above. Therefore, one of ordinary skill in the art would not have motivated to combine Miller and Wagoner because the combination does not teach the claimed invention, and Miller expressly teaches away from using bidding proxies in the final minutes of an auction.

IV. Therefore, because Miller, Wagoner, Foth and Hall fail to teach, alone or in combination, all of the elements of claim 1, claim 1 is allowable and Applicant respectfully requests that the rejection be withdrawn.

For at least the above reasons, independent claim 23 is also believed to be allowable. For at least the reasons noted above with respect to the independent claims 1 and 23, dependent claims 7, 8, 14-18, and 20-22, and new claim 24, are also believed to be allowable.

Further, Applicant respectfully notes with reference to claims 20 and 21 and their rejection over the above-discussed applied references, further in view of U.S. Patent 6,496,855 to Hunt (hereafter Hunt), that Hunt does not overcome the shortcomings of Miller, Wagoner, Foth and Hall, and does not appear to contemplate registrations for multiple auctions according to an exemplary embodiment of Applicant's claimed invention, but rather merely teaches or suggests an intermediary between a plurality of Internet web sites.

Further as to the rejection of claims 16 and 17 over the above-discussed applied references further in view of U.S. Patent 6,415,270 to Rackson (hereafter Rackson), Rackson at most contemplates a single online auction hosting services site that supports multiple-auction services for replicating an item to be auctioned and detecting bids in order to replicate an optimal bid. Rackson does not appear to overcome the shortcomings of Miller, Wagoner, Foth and Hall, and does not contemplate, teach or suggest persistent search agents, or the storing of auction

preferences of a bidder, according to exemplary embodiments of the Applicant's claimed inventions and further, fails to teach or suggest all the elements of claims 16 and 17.

Further as to the rejection of claim 15 over the above-discussed applied references further in view of U.S. Patent 6,963,854 to Boyd (hereafter Boyd) and U.S. Patent 5,600,632 to Schulman (hereafter Schulman), Applicants respectfully note that it would not have been obvious to a person of ordinary skill in the art at the time the invention was made to seek out six unrelated documents to allegedly arrive at Applicant's claimed invention, absent improper use of Applicant's specification in hindsight as a roadmap. Boyd relates to a target pricing system for competitive bid negotiated price proposal sales which applies regression analysis to identify statistical correlations between factors and market response curves. Boyd does not contemplate auctions, but rather relates to competitive bidding situations such as in the case of preparing and submitting written proposals for long term services contracts in response to a request for proposal (RFP), a different type of bid than an online auction bid. Schulman sets forth a telecommunications performance monitoring system for analyzing network performance of latency sensitive video content over an asynchronous transfer mode (ATM) switch, which has nothing to do with auctions and determining of timing of placement of bids dependent on response time considerations as contemplated by exemplary embodiments of Applicant's claimed inventions. Thus, Boyd and Schulman do not address the shortcomings of the above-applied references and further, fail to teach or suggest all the elements of claim 15. Hunt does not mention online auctions, even once.

Applicant notes that claim 24, which was added in the previous amendment, was not specifically rejected in the current office action, and is therefore allowable, as no references have been cited against it.

Applicant believes no fees are due at this time outside of papers otherwise submitted with this document (including a two months petition of extension of time). However, the Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 22-0261.

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